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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN

2003 AUG 29 P 3:18

JIM IRVIN

COMMISSIONER Arizona Corporation Commission

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COMMISSIONER

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS STRANDED COST
RECOVERY

NOTICE OF FILING PREFILED REBUTTAL TESTIMONY

Constellation NewEnergy, Inc. and Strategic Energy L.L.C., by and through their
undersigned counsel, hereby provide notice of filing the Prefiled Rebuttal Testimony of their
witness, Mark Fulmer of MRW & Associates, in the above-captioned dockets.

1 RESPECTFULLY SUBMITTED this 29th day of August 2003.

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13 **forgoing filed on August 29,**
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13 IN THE MATTER OF THE GENERIC
14 PROCEEDINGS CONCERNING ELECTRIC
15 RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

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17 SERVICE COMPANY'S REQUEST FOR
18 VARIANCE OF CERTAIN REQUIREMENTS
19 OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

20 IN THE MATTER OF THE GENERIC
21 PROCEEDINGS CONCERNING THE
22 ARIZONA INDEPENDENT SCHEDULING
23 ADMINISTRATOR

Docket No. E-00000A-01-0630

24 ISSUES IN THE MATTER OF TUCSON
25 ELECTRIC POWER COMPANY'S
26 APPLICATION FOR A VARIANCE OF
27 CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS STRANDED COST
RECOVERY

Docket No. E-01933A-98-0471

28 **PREFILED REBUTTAL TESTIMONY OF**

29 **MARK FULMER**

30 **AUGUST 29, 2003**

1 **I. Introduction**

2 This reply testimony is submitted on behalf of the Constellation NewEnergy,
3 Inc. ("Constellation NE") and Strategic Energy L.L.C. ("Strategic Energy") in
4 response to testimony submitted by several parties on July 28, 2003, regarding the
5 future of the Arizona Independent Scheduling Administrator ("AISA"). I have not
6 attempted to reply to all direct testimony with which I disagree. Rather, this reply
7 testimony addresses a limited number of issues of particular importance. In
8 particular, I respond to assertions that the AISA is not needed for dispute resolution
9 and that the AISA could be funded on a voluntary basis. These suggestions move
10 Arizona away from the benefits offered by retail choice by making the state less
11 attractive to energy service providers such as Constellation NE and Strategic Energy.
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13
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15 **II. The AISA Is Needed for Dispute Resolution**

16 On page 9 of the testimony of Arizona Electric Power Cooperative, Inc.
17 witness Mr. Huff, it is suggested that the FERC's "Enforcement Hotline" would be
18 sufficient to address dispute resolution. While this hotline undoubtedly has a place in
19 FERC's overall regulatory framework, it is not a reasonable substitute for the dispute
20 resolution framework set up in Section 6 the AISA bylaws. First, it must be noted
21 that the FERC Enforcement Hotline has a very broad mandate: it gathers information
22 on bidding anomalies, price spikes, inappropriate use of certain financial instruments,
23 fluctuations in available capacity on electric transmission lines and natural gas
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1 pipelines, interconnection discrimination, and improper market affiliate transactions.¹
2 Furthermore, its main function is gathering information in response to complaints.
3 Dispute resolution, while mentioned, is not listed as one of its main functions. It also
4 should be noted that barely one-third of the calls received by the Hotline in 2002
5 involved any electric issues, let alone let alone those involving the interpretation of
6 Open Access Transmission Tariffs ("OATTs") or energy service provider ("ESP")
7 dispute resolutions.²
8

9 Furthermore, Mr. Huff (page 10) and with some reservations, Tucson Electric
10 Power ("TEP") witness Mr. Beck (page 15), suggest that the dispute resolution
11 provisions in the utilities' OATT are sufficient for resolving more complex disputes.
12 I believe that market participants and the Commission should be more comfortable
13 with the protocols provided in section 6 of the AISA's bylaws than with the dispute
14 resolution procedures found in TEP's and APS's Open Access Transmission Tariffs
15 (Section 12 of either OATT). The AISA's method provides greater flexibility,
16 including a fast-track procedure, peer mediation as well as formal arbitration. The
17 OATT's dispute resolution focuses almost exclusively on arbitration.
18

19 Overall, I believe that keeping dispute resolution responsibilities, even
20 informal ones, with a local Arizona agency that is intimately familiar with the AISA's
21 Protocol Manual and the specific Arizona market is far preferable to ceding the
22 responsibility to a distant bureaucracy or relying on OATT mechanisms that were
23 designed to resolve issues arising in connection with point-to-point wholesale
24 transactions. Such local resolution will likely best serve all parties involved.
25

26 ¹ See, <http://www.ferc.gov/cust-protect/enforce-hot.asp>

27 ² Enforcements Hotline Statistics, FERC Office of Market Oversight and Investigations.

1 Mr. Huff also suggests that since the AISA's dispute resolution mechanism
2 was not used during the brief time that there were active retail direct access
3 transactions, that it is not needed now. While this fact speaks well of the protocols set
4 up by the AISA, the utilities and other parties active in the market at that time, it is
5 not relevant to the continued need for dispute resolution to be maintained by the
6 AISA. Dispute resolution is much like insurance: we hope that we will not need it,
7 but do not doubt it is wise to maintain. The fact that a driver has not been in an
8 accident is not a demonstration that she does not need insurance. Similarly, the fact
9 that the AISA's dispute resolution mechanisms were not called upon during the brief
10 time of market activity does not mean that they are not needed. Although dispute
11 resolution should be the method of last resort for addressing disagreements between
12 ESPs and transmission providers, it must be maintained to provide either party
13 entering into such an agreement with the assurance that any unforeseen difference
14 between it and the counterparty will be addressed swiftly and fairly.
15
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17

18 **III. AISA Funding Should Continue to Come from the Affected Utilities**

19 On page 4 and elsewhere in his testimony, Mr. Huff suggests the AISA should
20 be funded on a volunteer basis by "large consumers, ESP's, merchant plant operators
21 or other interested stakeholders" (page 4). Constellation NE and Strategic Energy
22 believe that in the long run, a grid manager or scheduling facilitator such as the AISA
23 should be funded through an access charge paid on a non-discriminatory basis by all
24 grid users. However, during the transition to a more market-oriented paradigm, such
25 funding is impractical. So as a public policy decision, the ACC chose to have the
26
27

1 AISA funded by the affected utilities. While this transition period is lasting longer
2 than anyone could have anticipated when the AISA was formed, the retail electric
3 market in Arizona is not yet mature or vibrant enough to fund the AISA via grid
4 access charges. On this, I believe Mr. Huff and I can agree.

5 Where I strongly differ is with the suggestion that it is sound policy to fund
6 the AISA on a voluntary basis. First, like any agency with an ongoing mission, the
7 AISA needs more assurance that it will continue to exist than is afforded by the
8 whims of voluntary funding. While it faces the budget issues confronted by any
9 agency that is dependent upon state policymakers, this is much different than that of a
10 non-profit, constantly scrounging for funds.
11

12 Furthermore, such a funding mechanism could in at least appearance tarnish
13 the "independence" of the AISA. If, for example, only a few donors stepped up to
14 provide the money to run the AISA, the appearance that the AISA's decisions could
15 be influenced by the fact that its existence depended upon the continuation of those
16 donations would make it a far less credible institution. This is not to remotely call
17 into question the integrity of anyone at the AISA, past or present. Rather, it is only to
18 point out that the appearance of undue influence could not be avoided if it were
19 funded in the way suggested by Mr. Huff.
20

21 This concludes my rebuttal testimony.
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